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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 20, 1999

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Filing, CC Docket No. 96-115

Dear Ms. Salas:

Time Warner Telecom ("TWTC") submits this letter concerning the provision by incumbent local exchange carriers ("ILECs") of subscriber list information ("SLI") of competitive local exchange carriers ("CLECs") to independent directory publishers. The Association of Directory Publishers ("ADP") and the Association for Local Telecommunications Services ("ALTS") have urged the Commission to require ILECs to provide independent directory publishers with CLECs' SLI.¹ However, recent *ex parte* submissions by ILECs suggest that the Commission may conclude in an upcoming order that Section 222(e) does not obligate ILECs to release CLECs' SLI to independent directory publishers.² Because of the critical importance of this matter to CLECs such as TWTC, TWTC respectfully requests that the Commission adopt the approach proposed by ADP and ALTS. Simply put, competition in the directory publishing and local exchange markets will be harmed

¹ See Joint *Ex Parte* of ALTS and ADP (filed Aug. 7, 1998). The U.S. Small Business Administration, Office of Advocacy ("SBA") has also urged the Commission to adopt a similar rule. See SBA *Ex Parte* (filed Feb. 18, 1999)("[A] policy to require ILECs to provide CLEC SLI is not only rationally related to the goals of the Act, it is required by the plain language of Sec. 222(e).").

² See YPPA *Ex Parte* (filed July 29, 1999)("YPPA has been informed that the Common Carrier Bureau staff has recommended that incumbent local exchange carriers (ILECs) should not be required to serve as a clearinghouse for competitive local exchange carriers (CLECs)"); SBC *Ex Parte* (filed July 28, 1999); Ameritech *Ex Parte* (filed July 26, 1999); BellSouth *Ex Parte* (filed July 16, 1999).

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significantly unless the Commission requires ILECs to provide independent directory publishers with CLECs' SLI.

ILECs generally receive CLECs' SLI pursuant to their interconnection agreements with the CLECs. ILECs then pass on CLECs' SLI to the ILECs' directory publishing affiliates. In addition, CLECs typically provide daily service order activity reports, directory listing formatting information, and details concerning their subscribers' listings captions to the ILECs. However, some ILECs refuse to provide CLECs' SLI to independent directory publishers, even when specifically requested to do so by the CLECs. This refusal is simply a ploy by the ILECs to gain an advantage over their competitors in two separate markets. First, it is an attempt to raise their CLEC rivals' costs by forcing CLECs to duplicate the data contained in the ILECs' listings databases (which is not feasible, as shown below) or, alternatively, to degrade CLEC service by forcing CLECs to forego having their subscribers' listings appear in independent publishers' directories.³ Of course, CLEC subscribers who discover that their listings do not appear in independent directories will be less likely to subscribe to a CLEC. Second, ILECs' refusal to provide CLECs' SLI is an attempt to impose costs on independent directory publishers by forcing them to obtain listings individually from each CLEC in their directory coverage areas.⁴

As a CLEC, it is the effect of the ILECs' refusal to deal on CLECs' costs and service quality that concerns TWTC. By virtue of the ILEC's position as the dominant provider of local exchange service in a region, an ILEC's database contains a complete set of listings, including listings of all CLECs who have signed interconnection agreements with the ILEC. However, some ILECs deliberately remove the CLEC listings before providing these data to independent directory publishers.⁵

³ ILECs do not have the same incentive to ensure that their subscribers' listings appear in independent directories. Rather, ILECs will benefit if independent publishers are unable to compete with the ILECs' directory publishing affiliates. If the ILECs' directory does not face competition, it can capture all the advertising revenue in a given region.

⁴ See *White Directory Publishers, Inc. Ex Parte* (filed Feb. 16, 1999) (describing the difficulties faced by independent directory publishers attempting to obtain SLI from CLECs). If independent publishers are unsuccessful in obtaining all CLEC listings, their directories will be used less frequently than the ILECs'. As a result, they will be less able to attract advertisers and could ultimately go out of business.

⁵ See *ADP Ex Parte* (filed April 7, 1998) (demonstrating that BellSouth removes CLEC listings prior to forwarding SLI to independent publishers). If independent directory publishers are unable to obtain all CLEC listings in a region, or are unable to format these listings correctly, as

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Independent publishers are consequently forced to attempt to identify and obtain listings from every CLEC in their directory coverage area. In complying with requests for listings from the independent publishers, CLECs are placed in an unreasonable position because ILECs' listing databases are "essential facilities," which can not feasibly be duplicated by the CLECs.⁶ For example, institutional subscribers with multiple listings, such as universities or businesses, are often served by more than one carrier. CLECs only possess their own subscriber's telephone numbers and other data necessary for publishing a directory, which they provide to the ILEC so that the ILEC can update its central listings database. Only ILECs have complete formatting, captioning, and sequencing information that a publisher needs to publish a complete and accurate listing for a customer that subscribes to more than one LEC. Hence, CLECs are unable to provide complete formatting and sequencing information to independent publishers. This and other, similar problems recur again and again when ILECs refuse to provide CLECs' SLI to independent directory publishers.

It is reasonable for ILECs to provide CLECs' listings to independent publishers because ILECs possess all the relevant information concerning listings of their own and CLECs' customers. ILECs who refuse to provide CLECs' SLI to independent publishers cite to the fact that CLEC listings are the property of the CLEC or that the CLEC has not granted its permission to provide its SLI to independent publishers.⁷ However, these concerns are red herrings and should be dismissed by the Commission. SLI is not "property" of telephone companies in any relevant sense.⁸ In any event,

described below, they will not be able to compete effectively with the ILECs' directory publishing affiliates and will lose advertising revenue.

⁶ These listings databases are essential facilities because they cannot easily be duplicated and refusal of access precludes entry into the market. See City of Anaheim v. So. Cal. Edison Co., 955 F.2d 1373, 1380 (9th Cir. 1992). Even the ILECs' directory publishing affiliates can not duplicate these databases and are dependent on the ILEC for the inputs needed to publish their directories.

⁷ See Ameritech Ex Parte (filed July 26, 1999)(claiming that Ameritech is contractually prohibited from releasing CLEC listings to independent publishers); BellSouth Ex Parte (filed July 16, 1999)(same).

⁸ See Feist Pub. Inc. v. Rural Tel. Service Co., Inc., 499 U.S. 340, 362 (1991)(The "basic information -- name, town, and telephone number -- about each person" who applies for telephone service "lacks the modicum of creativity necessary to transform mere selection into copyrightable expression.").

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TWTC would be more than willing to waive any relevant property rights to ensure that its listings are provided to independent publishers.

While CLECs and ILECs have been able to reach mutually acceptable agreements in some cases whereby the ILEC will provide CLECs' SLI to independent publishers, such arrangement are entirely voluntary on the part of the ILEC. This leaves the CLECs and independent publishers at the mercy and whim of the ILECs, who may refuse to provide the CLECs' listings to independent publishers in order to gain a competitive advantage. Only a finding by the Commission that ILECs are required to provide CLECs' SLI to independent publishers will solve this problem once and for all. TWTC has learned that White Directory Publishers, Inc. ("White"), recently filed a formal complaint against BellSouth, requesting that the Commission order BellSouth to provide to White all CLEC listings that BellSouth gathers through its interconnection agreements with CLECs and causes to be published in its affiliate BAPCO's directories. The Commission should take advantage of the opportunity presented by this complaint to resolve the issue of ILEC provision of CLEC listings in a specific factual setting.

In accordance with the Commission's rules, an original and one copy are being filed. Please feel free to contact me should you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink that reads "Donald F. Shepheard" followed by a stylized monogram or initials.

Donald F. Shepheard

cc: Dorothy Attwood
William J. Bailey
Kyle D. Dixon
Linda Kinney
Sarah Whitesell
Lawrence Strickling
William A. Kehoe, III
Daniel R. Shiman